

# Inappropriate NWBC Agreements

Organization receiving award, FY of award	Amount	Description of Project	De-facto grant inappropriately - awarded	De-facto co-sponsorship inappropriately awarded	Agreement entered into by non- contracting officer	Sole Source Justification Invalid	Contract not set aside for Small Business	Contractor Paid without delivering the required product
FY99 b4	\$10,000	b4	X		X	X	X	
FY99 b4	\$25,000	b4			X	X	X	X
FY00 b4	\$25,000	b4			X	X	X	X
FY01 b4	\$10,000	b4			X	X	X	
b4 FY99	\$25,000	Springboard Co-sponsorship		X	X	X	X	
b4 FY99	\$10,000	Springboard co-sponsorship		X			X	
b4 FY00	\$20,000	Springboard Web Site		X	X	X	X	
FY99 b4	\$25,000	b4			X	X	X	
FY99 b4	\$25,000 modification*	b4					X	

officer	Sole Source Justification Invalid	Contract not set aside for Small Business	Contractor Paid without delivering the required product
	X	X	
	X	X	X
	X	X	
	X	X	
	X	X	
	X	X	
	X	X	
	X	X	
	X	X	

officer			
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Organization receiving award, FY of award	Amount	Description of Project	De-facto grant inappropriately - awarded	De-facto co-sponsorship inappropriately awarded	Agreement entered into by non- contracting officer	Sole Source Justification Invalid	Contract not set aside for Small Business	Contractor Paid without delivering the required product
FY00 b4 ]	\$25,000	b4 ]			X	X	X	
FY00 b4 ]	\$25,000 modification*	b4 ]					X	
FY01 b4 ]	\$45,000	b4 ]			X	X	X	
FY01 b4 ]	\$50,000	b4 ]	X		X	X	X	
FY00 b4 ]	\$25,000	b4 ]	X			X		
FY01 b4 ]	\$25,000	b4 ]	X		X	X	X	
FY01 b4 ]	\$10,500	b4 ]			X	X	X	

\* - Modifications are continuation of existing contracts with new or revised terms.

# Travel Expenses To Be Recovered

## Appendix B

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Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
9.8300.0034	Millman	\$391.04	X				
9.8300.0035	Millman	\$672.24	X				
9.8300.0038	Millman	\$410.00	X				
9.8300.0045	Millman	\$527.50	X				
9.8300.0057	Millman	\$586.21	X				
9.8300.0079	Millman	\$1,922.98	X			X	X
9.8300.0088	Millman	\$760.05	X				X
9.8300.0094	Millman	\$1,395.13	X				X
9.8300.0100	Millman	\$1,022.20	X				
9.8300.0101	[b6]	\$918.89	X				
9.8300.0105	Millman	\$755.80	X				
9.8300.0107	[b6]	\$1,926.56	X				X
9.8300.0110		\$554.40	X				
9.8300.0111	Millman	\$369.00	X				
9.8300.0115	Millman	\$598.04	X				
9.8300.0122	Millman	\$431.52	X				
9.8300.0135	Millman	\$1,176.65	X				X
9.8300.0136	Filtzer	\$717.00	X				
9.8300.0143	Millman	\$480.50	X				
9.8300.0147	Millman	\$491.03	X				X
9.8300.0148	Filtzer	\$612.06	X				X
9.8300.0149	Millman	\$2,931.20	X			X	X
9.8300.0157	[b6]	\$544.20	X				
9.8300.0158		\$1,273.40	X				
9.8300.0165	Millman	\$706.03	X				X
9.8300.0173	[b6]	\$499.20	X				X
9.8300.0179	Millman	\$760.20	X				X
9.8300.0189	Filtzer	\$956.22	X				X
0.8300.0002	Millman	\$153.50	X				
0.8300.0011	Millman	\$516.31	X				
0.8300.0012	Millman	\$3,041.08	X				X
0.8300.0026	Millman	\$1,004.61	X				X
0.8300.0028	Millman	\$766.41	X				
0.8300.0030	Millman	\$168.50	X				
0.8300.0037	Filtzer	\$1,392.21	X				
0.8300.0042	Millman	\$1,373.76	X				X

Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
0.8300.0043	Filtzer	\$1,530.43	X				
0.8300.0056	Millman	\$713.06	X				X
0.8300.0065	Millman	\$217.50	X				
0.8300.0071	Millman	\$247.00	X				
0.8300.0102	Millman	\$560.00	X				
0.8300.0103	Filtzer	\$885.84	X				
0.8300.0108	Millman	\$690.92	X				X
0.8300.0110	Filtzer	\$166.00	X				
0.8300.0115	Millman	\$904.62	X				X
0.8300.0121	b6	\$711.45	X				X
0.8300.0123	Millman	\$680.32	X				X
0.8300.0124	Filtzer	\$218.74	X				
0.8300.0128	Filtzer	\$343.69	X				X
0.8300.0132	Filtzer	\$161.00	X				
0.8300.0138	Millman	\$569.54	X				
0.8300.0140	Millman	\$214.00	X				
0.8300.0141	Millman	\$539.24	X				
0.8300.0142	Filtzer	\$333.00	X				
0.8300.0150	Millman	\$332.00	X				
0.8300.0155	Millman	\$1,091.32	X				X
0.8300.0156	Millman	\$635.08	X				X
0.8300.0158	Filtzer	\$211.00	X				
0.8300.0163	b6	\$214.50	X				
1.8300.0018	Filtzer	\$278.01	X			X	X
1.8300.0019	b6	\$250.76	X			X	X
1.8300.0020	b6	\$270.22	X			X	X
1.8300.0021	Millman	\$375.00	X				
1.8300.0022	Filtzer	\$244.50	X				
1.8300.0023	b6	\$1,294.38	X				X
1.8300.0024	Millman	\$1,268.18	X	X			
1.8300.0025	Filtzer	\$1,208.68	X	X			
1.8300.0026	b6	\$523.18		X			
1.8300.0029	Millman	\$804.80	X				
1.8300.0030	Filtzer	\$600.90	X				
1.8300.0031	Millman	\$356.00	X				
1.8300.0034	Millman	\$3,474.27	X				X

Authorization Number	Traveler	Amount Questioned	Reason Questioned				
			Post-dated or Unauthorized Conference Travel	Unnecessary Travel to Las Vegas	Travel to Private Entity's Board Meeting (SBE)	Duty Station Lodging Expense	Lodging in Excess of Per Diem
1.8300.0038	Filtzer	\$586.75	X				X
1.8300.0045	Millman	\$110.00					X
1.8300.0049	Millman	\$207.00	X				
1.8300.0050	Filtzer	\$207.00	X				
1.8300.0052	Filtzer	\$233.50	X				
1.8300.0053	Millman	\$242.50	X				X
1.8300.0054	Filtzer	\$476.87	X				
1.8300.0055	Millman	\$517.36	X		X		
1.8300.0058	Millman	\$385.50	X				
1.8300.0071	Millman	\$211.50	X				
1.8300.0074	Millman	\$145.50	X				
1.8300.0075	Millman	\$971.00	X				
1.8300.0079	Millman	\$1,173.64	X				
1.8300.0081	Filtzer	\$686.50	X				
1.8300.0084	Millman	\$275.75	X				
1.8300.0122	Filtzer	\$91.50	X				
1.8300.0125	Millman	\$550.00	X				
1.8300.0126	Filtzer	\$115.50	X				
1.8300.0127	Millman	\$548.94	X				
1.8300.0128	Filtzer	\$157.75	X				
1.8300.0132	Millman	\$1,483.40	X				X
1.8300.0133	Filtzer	\$115.50	X				
1.8300.0134	[b6]	\$886.18	X				
1.8300.0138	Millman	\$394.50	X				
1.8300.0139	Millman	\$91.50	X				
1.8300.0140	[b6]	\$1,197.87	X				
1.8300.0153	Millman	\$294.00	X				
1.8300.0157	Millman	\$756.68	X				X
1.8300.0164	[b6]	\$124.88	X				
1.8300.0165	[b6]	\$225.79	X				

TOTAL

\$69,389.12



May 20, 2003

Mr. Harold Damelin  
Inspector General  
U. S. Small Business Administration  
409 3<sup>rd</sup> Street, SW  
Washington, DC 20416

Dear Mr. Damelin:

This letter is in response to the Office of Inspector General's draft audit report of the National Women's Business Council, Report 3-X. I appreciate being given the opportunity to respond to this report and the recommendations contained therein.

To begin, let me say how disturbed I am at the extent of the ethical and procedural violations documented in this report – not only the number of documented violations, but the fact that they occurred over such an extended period of time. I strongly support the Inspector General and the Small Business Administration's efforts to uncover and document these abuses, seek recovery of misspent funds, and set in place procedures to ensure that this cannot happen again.

I take no issue whatsoever with the need for administrative oversight of the expenditures of the National Women's Business Council (hereafter "Council"), to ensure they are carried out in accordance with Federal rules and regulations. However, given the fact that the Council has a Congressionally-mandated mission to provide independent advice and counsel – not only to the President and Congress but to the Small Business Administration itself – on policy issues of importance to the women's business community, that oversight should be administrative in nature and should not interfere with the independent, advisory status of the Council.

In general, if all of the rules and responsibilities that apply to SBA program offices also apply to the Council insofar as expenditure of funds (such as travel, research contracts and performance awards), we would like to explore how the Council might then be accorded the rights to expenditure vehicles that are likewise available to the SBA, such as co-sponsorship and grant authority.

I have discussed the audit report and its recommendations with the Office of General Counsel and others in the SBA, and will not comment specifically about the recommendations being directed toward SBA offices. Here, though, are my responses to the recommendations being made to me as the current Executive Director of the National Women's Business Council.

#### Responses to Specific Recommendations

##### I. Ethics Violations

- Recommendation 1C: That item has already been taken care of – all current employees received ethics training shortly after becoming employed at the Council. Therefore, this recommendation could be removed from the final report.



NWBC response to IG Audit Report, page two

II. Inappropriate Agreements

- Recommendation 2A: While we agree that this question should be posed to Springboard Enterprises, given that the former Council Executive Director is now its Executive Director, we feel that:
  - i. The Council does not have the expertise to request or review the information. Further, if this information was deemed to be important during the audit, it should have been requested by the auditors at that time, and
  - ii. We feel that, on principle, independent third parties should not be held accountable for the misdeeds of the former Executive Director. We would therefore disagree that any Springboard forum co-hosts should, at this stage, be requested or required to provide any additional information or justifications.
- Recommendation 2B: We concur with this recommendation, and it will be arranged with the appropriate bodies within the SBA.

III. Travel Policy Violations

- Recommendations 3A & 3B: This has already been addressed. We have had a briefing on travel regulations, and all requirements with respect to travel vouchers and documentation are already being met. Therefore, this recommendation could be removed from the final report.

V. Other Violations

- Recommendation 5D: While we support the tenor of this recommendation, we seek guidance from relevant SBA officials on how the determination of whether or not to seek the recovery of cash awards can be made.
- Recommendations 5E, 5F: These issues have already been addressed. Training in these areas has occurred, and this recommendation could be removed from the final report.
- Recommendation 5G: This issue will be addressed. The FY2002 Annual Report was submitted to Congress earlier than in any previous year, and subsequent reports will be submitted on time.

Finally, as a point of clarification: it was mentioned on pages iii, 18 and 21 of the audit report that the Council did not submit an annual report in FY1999. Upon my review after assuming the position of Executive Director, during my preparation of the FY2002 annual report, I discovered that annual reports were also not submitted in FY1995, FY1996 or FY1997.

Thank you again for the opportunity to respond to this report.

Sincerely,

b6

Julie R. Weeks  
Executive Director



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

**DATE:** May 23, 2003

**TO:** Harold Damelin  
Inspector General

**FROM:** Lisa M. Goear  
Chief of Staff

David A. Javdar  
General Counsel

Thomas A. Dumaresq  
Chief Financial Officer

Robert L. Gangwere  
Designated Agency Ethics Official

**IN RE:** Response to Office of Inspector General's Draft Audit Report – The  
National Women's Business Council

We are responding to the Office of Inspector General's (OIG's) draft Audit of the National Women's Business Council (NWBC), Report No. 3-X ("Draft Report"), dated April 1, 2003. We appreciate the opportunity to respond and to offer some revisions to your proposed recommendations.

The NWBC was established by Congress by section 401 of the Women's Business Ownership Act of 1988 for the purpose of reviewing the status of women-owned businesses and the roles played by federal, state and local governmental entities in assisting women entrepreneurs.<sup>1</sup> The NWBC is an independent federal advisory committee with operational authority, subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1. It uses SBA's gift acceptance authority and SBA's procurement and FFS systems, and the NWBC's Executive Director and staff are SBA public law employees. The enabling legislation, at 15 U.S.C. 631, as amended, designates how the President and the Administrator are to select the NWBC chair, members and the Executive Director, respectively.

As indicated in the Draft Report, the audit was a direct result of a referral made by the Office of General Counsel (OGC) to OIG in April of 2001. Subsequently, OGC has issued

<sup>1</sup> Women's Business Ownership Act of 1988, P.L. 100-533 (October 25, 1988), codified at 15 U.S.C. 631.



five legal opinions concerning the NWBC's authority and its relationship to SBA. The issues addressed include: 1) the employment status of the NWBC's Executive Director and her staff; 2) whether appropriated and gift funds can be used to provide refreshments at meetings hosted by the NWBC; 3) whether NWBC members can delegate their authority to others; 4) whether NWBC members are "special government employees;" and 5) the applicability of Federal procurement laws and regulations to NWBC research and study contracts. In support of this audit, OGC also provided legal advice to OIG concerning the six Springboard Forums which were held between January 2000 and May 2001.

In addition, SBA management has taken numerous steps designed to ensure effective SBA oversight of the NWBC's administrative, personnel and financial operations. These actions include the appointment of an acting Executive Director in early June of 2001 who, in conjunction with the Agency, took decisive action to improve the operation of the office, including the following specific steps: 1) obtaining the recovery of sums from former NWBC staff relating to travel expenses; 2) obtaining the recovery of sums from current NWBC staff for misuse of government property; 3) rejecting the payment of certain travel claims from former NWBC staff; 4) establishing proper time and attendance, as well as government contracting, procedures; 5) obtaining training for NWBC staff; 6) securing and protecting NWBC property; and 7) clarifying the employment status of NWBC staff. SBA is confident that these actions have made a substantial contribution toward assisting the NWBC in complying with all Federal laws and regulations applicable to its operations, and the Agency looks forward to working with the current Executive Director as she continues to improve the NWBC's internal operations.

Current SBA management was shocked and dismayed by the extent and scope of the ethical, legal and procedural violations it discovered with regard to NWBC operations during the past Administration. We emphasize, however, that since that time major improvements and corrective actions (as noted above) have taken place. With the issuance of this audit and the implementation of the agreed upon recommendations, SBA and the current NWBC can help ensure that the NWBC continues to meet its important statutory mission.

### RECOMMENDATIONS

OIG has made twenty-six specific recommendations to SBA and the NWBC. It is our understanding that the NWBC will respond to this Draft Report independently and, therefore, where applicable, SBA defers to the NWBC with regard to recommendations addressed directly to it.

SBA addresses each of OIG's recommendations as follows:

*That the Administrator:*

- 1A *Appoint a senior SBA official to monitor NWBC compliance with all laws and regulations pertaining to administrative matters.*

The Administrator has already appointed a senior SBA management official to provide administrative oversight for the Executive Director of the NWBC. During the last two years, the Chief of Staff and then the Associate Deputy Administrator for Entrepreneurial Development have been responsible for providing administrative oversight and clearing the Executive Director's official leave and travel. Recently, the Administrator appointed Robert J. Moffitt, acting Deputy Associate Deputy Administrator for Management and Administration, to continue with that responsibility and to ensure that all contracting activities, as well as the expenditure of appropriated and gift funds, are conducted according to SBA internal administrative procedures.

Thus, SBA requests that Recommendation 1A be deleted from the final audit report.

- 1B *Issue a notice throughout the SBA stating that all NWBC staff members are SBA employees, and as such are subject to the same SBA rules and policies as other SBA offices.*

SBA agrees in part and disagrees in part with this recommendation. While it would make sense to issue an Information Notice to all SBA Management Board members informing them that NWBC staff members are SBA employees, and as such are subject to the same SBA and government-wide rules and regulations that apply to other SBA employees, it is unnecessary to issue such a notice to every SBA employee. Most SBA employees do not conduct business with NWBC or have any contact with the NWBC office, and therefore have no need to receive such notice. By sending a notice to all Management Board members, the people who need to be aware of the NWBC's status will have received proper notice. Management Board members may, of course, communicate such information to their subordinates on an as needed basis.

It is incumbent on SBA to manage its electronic notification system in a way that tailors its communications to the individual employees that have a need to know and limit the number of "all employees" notices, thus maximizing the likelihood that important notices from management will be read. Therefore, SBA requests that Recommendation 1B be revised to read as follows:

- 1B Issue an Information Notice to all Management Board members informing them that NWBC staff are SBA employees, and as such are subject to the same SBA and Government-wide rules and regulations as other SBA employees.
- 1C *Determine, in consultation with the Designated Agency Ethics Officer [sic], whether the duties and the responsibilities of the Executive Director and/or Program Manager are such that they should be required to file confidential financial disclosure reports.*

SBA management, in consultation with the Designated Agency Ethics Official (DAEO), has already done so. SBA management determined that the NWBC Executive Director will be required to file an annual Confidential Financial Disclosure Report (Form 450). Currently, the NWBC does not have a "Program Officer."

Thus, SBA requests that Recommendation 1C be deleted from the final audit report.

*That the Executive Director of NWBC:*

*1D Ensure that all current and future NWBC employees receive Ethics training.*

SBA defers to the NWBC on this recommendation; however we understand that the Executive Director has agreed to this recommendation. In fact, the Executive Director and her current staff received ethics training as part of their new SBA employee orientation. The Executive Director and her staff will also be included in all future ethics training offered to SBA headquarters employees by the DAEO or his staff.

Thus, SBA requests that Recommendation 1D be deleted from the final audit report.

*That the Designated Agency Ethics Officer [sic]:*

*1E Finalize the supplemental regulation requiring agency employees to obtain prior approval before seeking outside employment.*

SBA disagrees with this recommendation. Government ethics rules already require all SBA employees to personally ensure that their outside activities conform to all Government-wide ethics laws and regulations. See 5 CFR Part 2635, Subpart H. Seeking counseling and advice from an Agency ethics official before engaging in outside activity is, therefore, the responsibility of SBA employees. This fact is stressed in all regular ethics training provided to new and current SBA employees, and is mentioned on SBA's Intranet "Ethics Home Page."

The Designated Agency Ethics Official (DAEO) also notes that the authority to determine when it is "necessary or desirable" for an agency to issue "supplemental regulations," requiring employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, rests solely with the DAEO. Several years ago the DAEO considered issuing such supplemental regulations but decided not to do so for several reasons. First, SBA required outside activity approvals prior to the promulgation of new Office of Government Ethics (OGE) regulations in 1993. It was the experience of the DAEO that the benefits gained from processing, reviewing and responding to such requests did not

justify the substantial cost in staff time involved. Since 1993 the support staff available to SBA ethics officials has substantially decreased, making a return to the old system impossible. Second, since over 2,000 SBA employees, primarily grades 11 through 15, annually file Confidential Financial Disclosure Reports (Form 450) that disclose their outside activities, such an approval process is unnecessary.

Consequently, the DAEO does not intend to issue supplemental regulations at this time. The DAEO will agree, however, to issue an Information Notice to all SBA employees stressing the requirements of the law and the need to consult with an SBA ethics official prior to engaging in certain types of outside activities.

Therefore, SBA requests that Recommendation 1E be revised to read as follows:

- 1E Issue an Information Notice to all SBA employees reminding them of the relevant ethics laws and regulations pertaining to certain types of outside activities, and encourage them to consult with an SBA ethics official prior to engaging in such activities.

*That the Executive Director of NWBC:*

- 2A *Require SBE and other co-hosts of the Springboard forums to provide justification for the forum income retained by SBE and co-hosts from the Silicon Valley I and II, New England, New York and Mid-West forums based on estimated expenses incurred. After reviewing the justification, determine whether any income in excess of expenses should be recovered. If a determination to seek recovery is made, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.*

SBA defers to the NWBC with regard to the first part of this recommendation. However, we note that, even if the NWBC determines that recovery should be pursued, SBA reserves the right to independently determine whether recovery is legally supportable. We do agree, however, to consider any referral made by the NWBC with regard to this issue.

- 2B *Ensure that NWBC members and staff receive written guidance and training from OPGM on appropriations law dealing with the distinctions between contracts, grants and cosponsorship authority.*

SBA defers to the NWBC with regard to its willingness to seek such guidance and training. However, SBA disagrees that OPGM is the appropriate office to provide guidance and training "on appropriations law," if requested. Instead, the appropriate office would be the Office of General Counsel.

*That the Chief Financial Officer:*

- 2C Recover \$50,000 from [redacted] for not producing the required deliverables in FYs 1999 and 2000.

SBA does not agree that this recommendation is appropriately directed to the Chief Financial Officer (OGC is the appropriate office), or that a decision to seek recovery is justified at this time. Such a conclusion is premature. SBA does agree, however, to review this matter. To the extent that OGC determines that recovery is legally supportable, SBA will review its legal options and make a final determination as to how to proceed.

- 2D Recover \$63,000 from SBE for the Mid-Atlantic forum proceeds it received.

See SBA's response to Recommendation 2C, above.

*That the Executive Director of NWBC:*

- 3A Take the necessary steps to ensure that all NWBC employees are knowledgeable about the relevant travel regulations.

SBA defers to the NWBC on this recommendation. However, SBA agrees to provide the NWBC whatever assistance is requested, subject to available funding, with regard to assisting the NWBC's members and staff in understanding and complying with Federal travel regulations.

- 3B Ensure that travel vouchers are completed and supporting documentation maintained to support all future invitational travel.

SBA defers to the NWBC on this recommendation. However, SBA agrees to provide the NWBC whatever assistance is requested with regard to assisting the NWBC's members and staff in properly documenting their invitational travel.

*That the General Counsel:*

- 3C Determine whether travelers are liable for the cost of their foreign travel if the authorization violates SBA's Travel SOP, but SBA and the travelers mistakenly believed that the travelers did not have to comply with SBA regulations.

SBA agrees to have OGC review the primary documents assembled by OIG and determine what actions, if any, are required. To the extent that OGC determines that recovery is legally supportable, SBA will review its legal options and make a final determination as to how to proceed. We assume that the OIG's reference to "SBA regulations" is to the Federal Travel Regulations, as SBA does not have its own travel regulations.

*That the Chief Financial Officer:*

- 3D *Recover \$69,389.12 from appropriate parties for improperly authorized travel that has not yet been recovered.*

SBA disagrees that this recommendation is appropriately directed to the Chief Financial Officer (OGC is the appropriate office), or that a decision to seek recovery is justified at this time. Such a conclusion is premature. SBA does agree, however, to have the OGC review the primary documents assembled by OIG and determine what actions, if any, are required. To the extent that OGC determines that recovery is legally supportable, SBA will review its legal options and make a final determination as to how to proceed.

- 3E *Recover from the responsible individual(s) any funds due the Government based on the determination the General Counsel makes in implementing Recommendation 3C.*

See SBA's response to Recommendation 3C, above.

- 3F *Incorporate provisions in SBA's travel SOP requiring the NWBC Director to obtain prior written authorization for her travels from the person whom SBA will identify in response to Recommendation 1A.*

SBA agrees with this recommendation.

- 4A *Transfer the remaining balance of \$2,375.83 from NWBC's BATF account to the appropriate SBA travel account.*

SBA agrees with this recommendation. The Office of the CFO, using its records and the records that OIG has gathered during this audit, will record the transfer of the appropriate amount from the BATF to the Salaries and Expenses Appropriation for the fiscal year to which the original travel reimbursement applied.

- 4B *Recover \$4,921.43 (\$7,297.26 in deposited travel reimbursements less the \$2,375.83 remaining BATF balance) from the [former] Executive Director to correct the reimbursements for Government-paid travel expenses that were improperly deposited into the BATF, and recover an additional \$1,682.30 from the [former] Executive Director to cover the shortfall in the BATF resulting from the reception held in her honor.*

See SBA's response to Recommendation 3D, above.

- 4C *Finalize SOP 20 14, Funds Received from Non-Appropriated Sources, to provide clear guidance on the proper use of the BATF.*

SBA agrees with this recommendation. SOP 20 14 for the BATF has been in a draft form for a number of years. The Office of the CFO will work with OGC to update the SOP and place it in clearance within the Agency.

- 4D *Provide training and written guidance to OCFO employee(s) to ensure that BATF transactions are reviewed (both deposits and expenses) for propriety and that any suspicious transactions are reported to his/her supervisor for proper action.*

SBA agrees to this recommendation. Within the Office of the CFO, the Budget Officer, the Director of Financial Administration, and the Director of the Denver Finance Center will review the existing process used for BATF deposits and expenses to assure that transactions are reviewed for propriety and that suspicious transactions are referred for higher level review. Subsequent to this review, the resulting BATF procedures will be documented and communicated to OCFO staff members handling BATF transactions and included in the final version of SOP 20 14.

- 5A *Recover \$10,000 from the [former] Program Manager for the improper cash award issued as a "consulting fee."*

See SBA's response to Recommendation 3D, above.

- 5B *Recover \$1,398.95 from the [former] Executive Director for unallowable charges made on the Government-issued purchase card.*

See SBA's response to Recommendation 3D, above.

- 5C *Recover from the [b6] all non-recovered excess airtime charges billed to her Government cellular phone that are due to personal calls.*

See SBA's response to Recommendation 3D, above.

*That the Executive Director of NWBC:*

- 5D *Determine whether SBA should seek recovery for the awards made to the [former] Executive Director and NWBC staff that were improperly approved or not approved. If a determination is made that SBA should seek recovery, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.*

SBA defers to the NWBC with regard to the first part of this recommendation. However, we note that, even if the NWBC determines that recovery should be pursued, SBA reserves the right to independently determine whether recovery is legally supportable. We do agree, however, to consider any referral made by the NWBC with regard to this issue.

- 5E *Review Title 18 USC § 1913 with NWBC members and staff to ensure that everyone understands the lobbying restrictions imposed on Government employees.*

SBA defers to the NWBC on this recommendation. However, SBA is willing to provide the NWBC members and staff assistance with regard to understanding and complying with the anti-lobbying statute.

- 5F *Review 15 USC § 7107 with NWBC members and staff to ensure that everyone understands the requirements of NWBC's makeup and how members are to be appointed.*

SBA defers to the NWBC on this recommendation. However, SBA is willing to provide the NWBC members and staff assistance with regard to understanding the NWBC's statutory structure and authority. Several of OGC's recent legal opinions have already done so.

- 5G *Implement controls to ensure that statutorily required reports are prepared and submitted to appropriate officials in a timely manner.*

SBA defers to the NWBC on this recommendation.

If you have any questions or wish to discuss this matter further, please contact Robert Gangwere, Acting Deputy General Counsel, OGC, at (202) 619-0639.

cc: Julie R. Weeks, Executive Director, NWBC



# COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC  
 WASHINGTON, DC 20004-2401 NEW YORK  
 TEL 202.662.6000 LONDON  
 FAX 202.662.6291 BRUSSELS  
 WWW.COV.COM SAN FRANCISCO

STEPHEN P. ANTHONY  
 TEL 202.662.5105  
 FAX 202.778.5105  
 SANTHONY@COV.COM

May 23, 2003

## **BY FACSIMILE AND FEDERAL EXPRESS**

Robert G. Seabrooks  
 Assistant Inspector General for Auditing  
 U.S. Small Business Administration  
 Office of the Inspector General  
 Auditing Division, Mail Code 4112  
 409 3rd Street, S.W.  
 Washington, D.C. 20416

Re: NWBC Draft Audit Report

Dear Mr. Seabrooks:

This letter serves as the formal response of our client, Springboard Enterprises, Inc., to the Draft Report of the Audit of the National Women's Business Council ("NWBC" or the "Council"), which we received from your office on April 2, 2003. We respectfully submit that the Draft Report contains a number of findings and recommendations that are not supported by the facts and that rest on erroneous assumptions regarding the history of the Springboard forums, the creation of Springboard Enterprises as a non-profit entity, and its relationship to the NWBC and the Small Business Administration ("SBA").

### **A. General Comments on the Springboard Forums**

The Springboard forums were created through the substantial efforts of numerous organizations that for years have been at the forefront of advancing the interests of women entrepreneurs. The organizations, which include the [

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 b4  
 ], and dozens of other corporate and university sponsors, have spearheaded the drive to increase the amount of equity capital available to women business owners. All of these organizations invested heavily in the success of the Springboard forums. Through a combination of funding, staffing, and expertise, they contributed the vital resources necessary to bring the Springboard forums to fruition and to maintain their on-going success.

Although it is true that the NWBC had a role in organizing and supporting the Springboard forums and that Council staff devoted time to these efforts, we respectfully submit that the OIG has misunderstood and overstated the Council's role. The reality is that the bulk of

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the funds, expertise, staffing, and in-kind support for the Springboard forums came from private entities, not the Federal Government. Moreover, the mere fact that the Council collaborated on the Springboard forums does not make Springboard a "Government program" or give the Government a proprietary interest in the forums.

Thus, we take strong exception to those portions of the Draft Report that assume that, where the NWBC (in addition to numerous non-governmental donors) provided some funding for a forum, the proceeds from the forum constitute "Government funds." The Springboard program was not developed for the NWBC or the SBA. Nor were the forums created by their co-sponsors to generate a profit or an investment return for themselves or for the Federal Government. On the contrary, the forums – and the various entities contributing to their success – sought not to reap a financial benefit, but to provide women entrepreneurs with access to capital.

The OIG's assertion that the Government has been "denied its fair share" and that the Government is entitled to certain of the forum proceeds is not supported by citation to legal authority and is wholly inconsistent with the NWBC's mission. Congress established the NWBC as an independent advisory council whose statutory mission is to "serve as an independent source of advice and policy recommendations" to the Interagency Committee on Women's Business Enterprise (the "ICWBE"), to the SBA, to Congress, and to the President. Pub. L. 103-403, § 405, 108 Stat. 4175, 4195 (as amended, 15 U.S.C. § 631, Note). Congress intended the NWBC to serve a "private sector advisory function," as distinct from the role of the ICWBE as an interagency government body. H.R. Conf. Rep. No. 103-824, in 140 Cong. Rec. H10521, H10533 (Oct. 3, 1994).

Moreover, Congress has specified that the Council is obligated to "develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise." 15 U.S.C. § 7106(d)(4) (2003). In fact, the Council itself states that its mission is "to promote bold initiatives, policies and programs designed to support women's business enterprises at all stages of development in the public and private sector marketplaces, from start-up to success to significance." NWBC web site, at <<<http://www.nwbc.gov/faqs/faqs.html#1>>>.

Thus, since its inception, the Council has co-sponsored and promoted a diverse array of public/private sector initiatives designed to foster women's business ownership. Many of these initiatives have involved strategic partnerships and agreements with private organizations and companies – Springboard is just one example. Moreover, the continuation of the Springboard program under the aegis of a separate non-profit organization is consistent with the best of what the Council contributes to women's entrepreneurship – nurturing the development of bold new initiatives and ideas for making equity capital more available to women business owners.

In this instance, the Springboard forums had become so successful and so important to the venture capital community that it made good sense to launch a separate non-profit

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organization that could continue to grow the Springboard concept. Those associated with the Springboard forums came to a consensus that a separate organization should be incorporated with the specific focus of educating women on how to grow their businesses through the use of private equity. The creation of this new non-profit would alleviate the staffing burden on the various private sponsors of the forums, sustain the growth of the Springboard program in the future, and guarantee access to substantial private funding.

As plans were being made to incorporate Springboard Enterprises, Council members were kept informed at every turn. See Minutes, Oct. 4, 2000, at 44, 44-45 (Ms. Millman: "Just so that people understand about Springboard . . ."; "[D]ecisions are being made now to spin this off, like we have done [with] other ideas and concepts . . ."); see also Minutes, Feb. 14, 2001, at 150, 151 (Ms. Millman: "[I]t's appropriate, like we have done with many other projects to spin Springboard off to its own enterprise"; "Debra and I are going to . . . move to Springboard . . ."). These Council members were encouraging and supportive, providing valuable guidance along the way.

Nevertheless, the OIG concludes that "SBE appears to have been given an unfair competitive advantage. . . [The] connection with NWBC lent a certain degree of credibility to SBE and allowed it to take advantage of publicity NWBC had received for its forums and the connections NWBC had made within the venture capital community." Draft Rep. at 6. These comments completely mischaracterize the nature of the Springboard forums and exaggerate the influence of the Council on the venture capital community. Through its exposure to leading organizations like [redacted], the Council gained knowledge, expertise, access to networks, and influence in high-growth entrepreneurship. Thus, if anything, it was the stature and relevance of the Council that was enhanced as a result of the Springboard collaboration.

Moreover, Springboard Enterprises did not "take advantage of publicity NWBC had received for its forums." *Id.* (emphasis added). As we have discussed, the Springboard forums did not belong to the Council, and the OIG overstates the Council's role in their success. In addition, Springboard Enterprises did not come into being because of the NWBC's "connections." It was created by the collaboration and planning of various individuals and organizations that had been working together for years to define and shape the community for women entrepreneurs.

In sum, we respectfully submit that the OIG's perspective on the Springboard program – i.e., that it was a Government program supported by Government funds – fundamentally misunderstands and misrepresents both the Council's mission and the nature of the Springboard initiative.

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**B. Comments on Specific Recommendations for Recovery of Funds**

Springboard Enterprises strongly disputes the specific conclusion by the OIG that Springboard Enterprises "inappropriately received the \$63,000 in leftover proceeds from the Mid-Atlantic forum . . . ." *Id.* The OIG states that funds collected at the Mid-Atlantic forum were "Government funds," *id.*, and that "the Government was denied its fair share of the leftover proceeds despite its considerable contributions . . . ." *Id.* at 10. As discussed above, however, this conclusion rests on the misguided premise that the Springboard forums were created by and for the Council, and that the Council expected or should have received a financial return on its investment in the Springboard forums.

Moreover, Springboard Enterprises was not "unjustly enriched by receiving \$63,000 in leftover forum proceeds generated prior to its incorporation." *Id.* Springboard Enterprises was conceived and organized by many of the same individuals in the public and private sectors who were responsible for the success of the Springboard forums. Although Springboard Enterprises, the entity, was incorporated after the Mid-Atlantic Forum, the transition of responsibility for the Springboard forums to a separate non-profit was simply the next stage in the evolution of the Springboard concept.

Indeed, the provision to Springboard Enterprises of funds representing the excess of forum receipts over expenditures was consistent with long-standing practice. The organizers of the various Springboard forums had a history of re-investing proceeds from forums into the planning and development of subsequent forums. In other words, each forum helped to fund the next forum. Thus, when it was decided that a separate non-profit entity should be established to manage the Springboard forums, an appropriate and important step was to invest certain proceeds from the Mid-Atlantic Forum in the new venture. In this sense, the money given to Springboard Enterprises was not viewed by the forum organizers as profit-sharing with the new non-profit, but rather as "seed" money for subsequent forums. In fact, Council funds were not needed after 2000 because proceeds from the Mid-Atlantic Forum were sufficient to fund subsequent forums in New York and the Midwest.

By the same token, we object to the suggestion that Springboard Enterprises and other forum co-hosts should be required to justify their retention of certain proceeds from the Springboard forums based on estimated expenses incurred. The Council has no legitimate claim to any of the funds retained or received by the forum co-hosts, as any proceeds from the forums are directly and primarily attributable to the substantial investment of time and money by private organizations. The reality is that all funds received by the forum co-hosts have been used by these organizations to continue the promotion of women's business enterprise. It is misguided to suggest that they should now be divested of funds that were received legitimately and that have been put to uses that are entirely consistent with the mission of the Council.

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Never in its history or in its stated mission has the Council sought to obtain a financial benefit from its efforts. Rather, the Council's historical role has been the funding and "seeding" of various public/private initiatives. If the SBA were to compel Springboard Enterprises or other forum co-hosts to remit funds to the Federal Government, the result would be the imposition of an unjustifiable and short-sighted penalty on organizations that are committed to promoting the growth of women's business enterprise. This result would be a setback to the interests of women business owners, whose interests the NWBC was established to advance.

We respectfully request the opportunity to meet with the OIG to discuss these issues further.

Sincerely,

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Stephen P. Antnony

# COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC  
WASHINGTON, DC 20004-2401 NEW YORK  
TEL 202.662.6000 LONDON  
FAX 202.662.6291 BRUSSELS  
WWW.COV.COM SAN FRANCISCO

STEPHEN P. ANTHONY  
TEL 202.662.5105  
FAX 202.778.5105  
SANTHONY@COV.COM

May 23, 2003

## **BY FACSIMILE AND FEDERAL EXPRESS**

Robert G. Seabrooks  
Assistant Inspector General for Auditing  
U.S. Small Business Administration  
Office of the Inspector General  
Auditing Division, Mail Code 4112  
409 3rd Street, S.W.  
Washington, D.C. 20416

Re: NWBC Draft Audit Report

Dear Mr. Seabrooks:

This letter serves as the formal response of our clients, Amy Millman and Debra Filtzer, to the Draft Report of the Audit of the National Women's Business Council ("NWBC" or the "Council"), which we received from your office on April 2, 2003.

As you know, our clients gave their full cooperation to the Office of the Inspector General ("OIG") throughout the audit process. At every opportunity, Ms. Millman attempted to explain her responsibilities at the Council and her involvement with the Springboard program. In particular, at a meeting with the OIG at the offices of Covington & Burling on January 9, 2002, Ms. Millman cooperatively and candidly answered an expansive set of questions from the OIG that covered many if not all of the subjects addressed in the Draft Report.

Nevertheless, the tone and substance of the Draft Report reinforce our long-held concern that, at the very beginning of its audit, the OIG quickly became disposed to take an unfavorable view of Ms. Millman and Ms. Filtzer. Indeed, the OIG appears to have disregarded, mischaracterized, or misunderstood much of what Ms. Millman conveyed during the January 9, 2002 meeting. Ultimately, we are left with the impression that the OIG's unfavorable view of Ms. Millman and Ms. Filtzer has colored the contents of the Draft Report, as reflected in its inclusion of findings and recommendations that can only be characterized as tendentious. We offer the comments below in the hope that the OIG will modify its report in order to provide a more accurate and balanced perspective on the activities of Ms. Millman and Ms. Filtzer, as well as to withdraw those recommendations that are without a legal or factual basis.

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**I. Summary of Ms. Millman's and Ms. Filtzer's Position**

We respectfully submit that the Draft Report contains a number of findings and recommendations that are not supported by the facts and that rest on erroneous assumptions about the NWBC, its mission, and its relationship to the Small Business Administration ("SBA") and to Springboard Enterprises, Inc. We also feel that the report unfairly characterizes the commitment of Ms. Millman and Ms. Filtzer to the work of the Council and their motivation in developing the Springboard program.

The gist of the Draft Report is that during Ms. Millman's tenure as Executive Director of the NWBC, the Council's business practices violated a number of federal regulations, and that Ms. Millman and Ms. Filtzer engaged in ethics violations in connection with their involvement with Springboard Enterprises. The report also emphasizes, however, that many of the alleged violations can be attributed to the historical understanding by the Council and by the SBA itself that the NWBC was a non-SBA entity, which in turn led to insufficient oversight of the Council's activities by various SBA offices. Nevertheless, the OIG now recommends collecting tens of thousands of dollars from our clients, based primarily on allegations that Ms. Millman and Ms. Filtzer violated the federal travel regulations and SBA travel policy.

While we address the substance of the report in more detail below, we pause to make a few observations at the outset. The OIG's recommendation that our clients should reimburse the Government for their Council-related travel is utterly misguided. The OIG seeks to recover tens of thousands of dollars because documentation for Council-related travel either does not exist or was dated after the travel took place. As we discuss in more detail below, this recommendation is grossly unfair, given that the Government has already processed and approved these reimbursements, the travel was taken to carry out legitimate Council business, and our clients relied on a trusted colleague to handle all aspects of travel reimbursement. It is fair to assume that this colleague acted in conformity with the training and instructions she received from the SBA. Thus, it is ill-advised to recommend that Ms. Millman and Ms. Filtzer be required, after the fact, to pay for official government travel out of their own pockets, because of paperwork errors that resulted from inadequate guidance (or perhaps even incorrect instructions) from the SBA itself.

By the same token, a number of the OIG's other findings and recommendations are not justified by the facts. Ms. Millman conducted the affairs of the Council with a firm belief that her practices were proper -- a belief buttressed by the fact that transactions of all types were processed routinely and without question by various offices within the SBA. Thus, in areas such as procurement, use of the Business Assistance Trust Fund, and office purchases, Ms. Millman should not be penalized for faithfully executing her responsibilities.

In addition, we object to any suggestion in the Draft Report that Ms. Millman and Ms. Filtzer shirked their Council duties in favor of work on Springboard. Although Springboard was

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time-consuming, Ms. Millman and Ms. Filtzer were fully engaged on a number of other Council initiatives. Indeed, while the OIG faults our clients for the extent of their involvement with Springboard, the Council Chair and its members consistently praised them for the very same efforts, which the Council viewed as consistent with its mission.

Moreover, we take strong exception to those portions of the report that seek to inculcate Debra Filtzer. As you know, Ms. Filtzer was an employee of the Council who reported to Ms. Millman and, ultimately, to the Council members and its Chair. Accordingly, decisions about travel arrangements (including decisions about what trips she should take) and other Council business were not hers to make. Ms. Filtzer followed the instructions of her superiors and should not now be asked to remit large sums of money to the Government that were expended at the behest of others and on behalf of the Council.

## II. Specific Comments

### A. Finding 1: Alleged "Possible Violations" of Government Ethics Regulations

The Draft Report states that Ms. Millman and Ms. Filtzer "appear to have violated ethics regulations by (1) participating personally and substantially in an official capacity in particular matters which had a direct and predictable effect on the financial interest of an organization with which they were affiliated, (2) engaging in outside activities that conflicted with their official duties, and (3) using Government equipment and time for other than authorized purposes." Draft Report at 3. The report continues by stating that "as SBA employees, they were bound by the laws of the United States, and the ethics regulations promulgated by the Office of Government Ethics, as well as any supplemental Agency regulations." *Id.* at 3 (emphasis added).

The OIG acknowledges, however, that "many SBA officials did not consider NWBC employees to be SBA employees and treated NWBC as a non-SBA entity." *Id.* at 1; see also id. at 5 ("During the time period covered by this audit . . . there was confusion within SBA as to the status of NWBC staff."). The OIG notes further that it was only during the audit process that the "SBA determined that NWBC's staff are SBA employees subject to all of the same rules and restrictions placed on any SBA employee." *Id.* at 1.<sup>1</sup>

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<sup>1</sup> In fact, one may fairly question whether anyone within the SBA believed that the NWBC was an SBA entity prior to the initiation of this Audit. The Draft Report is replete with statements from various SBA offices to the effect that the NWBC was not considered an SBA entity. Indeed, as the OIG points out, many of these offices – including the Office of Procurement and Grants Management, the Office of the Chief Financial Officer, and the Office of Human Resources – provided insufficient oversight to the Council as a result of their understanding of the NWBC's status within the SBA.



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Indeed, the view expressed by SBA officials during the audit process is fully consistent with the Council's history. Congress established the NWBC as an independent advisory council whose statutory mission is to "serve as an independent source of advice and policy recommendations" to the Interagency Committee on Women's Business Enterprise (the "ICWBE"), to the SBA, to Congress, and to the President. Pub. L. 103-403, § 405, 108 Stat. 4175, 4195 (as amended, 15 U.S.C. § 631, Note). Congress intended the NWBC to serve a "private sector advisory function," as distinct from the role of the ICWBE as an interagency government body. H.R. Conf. Rep. No. 103-824, in 140 Cong. Rec. H10521, H10533 (Oct. 3, 1994). Accordingly, the Executive Director and staff of the NWBC were appointed without regard to the competitive service requirements of the federal code and are paid without regard to the General Schedule pay scale.

In 1992, as a result of budgetary constraints, the Council was given office space in the SBA's Washington, D.C. headquarters. Two years later, the SBA agreed to assume the role of fiscal agent for the Council, replacing the General Services Administration. Despite this limited involvement with the SBA, the Council did not exist as an office or department of the SBA. In fact, the only function of significance performed by the SBA was approving and processing NWBC contracts, agreements, and expenditures. Otherwise, the Council operated as Congress intended – as an independent statutory commission.

Because of the SBA's own "uncertainty" concerning the status of Ms. Millman and Ms. Filtzer, the SBA did not determine whether they should be required to file Confidential Financial Disclosure Reports, and no ethics training was provided to them. Given the acknowledged ambiguity of the status of Ms. Millman and Ms. Filtzer, we submit that it is unfair to conclude that they could be guilty of ethics violations when there was a long-standing understanding, shared by the SBA itself, that Council employees were not SBA employees and that the Council was a non-SBA entity. Ms. Millman and Ms. Filtzer operated under this understanding, and they should not be criticized for failing to adhere to standards that appear not to have applied to them during the term of their employment.

Even if the OIG believes that it can hold Ms. Millman and Ms. Filtzer accountable for violations of ethics regulations, its conclusion that such regulations were violated ignores the interrelationship between the work of the Council and the development, and ultimate launch, of Springboard Enterprises as a separate non-profit organization. The Council was not set up to become a profit center for the Federal Government or to generate an investment return, but rather to serve as a catalyst in making opportunities available to women business owners. Indeed, Congress has specified that the Council is obligated to "develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise." 15 U.S.C. § 7106(d)(4) (2003). Moreover, the Council itself states that its mission is "to promote bold initiatives, policies and programs designed to support women's business enterprises at all stages

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of development in the public and private sector marketplaces, from start-up to success to significance." NWBC web site, at <<<http://www.nwbc.gov/faqs/faqs.html#1>>>.

Thus, since its inception, the Council has sponsored and promoted a diverse array of public/private sector initiatives designed to foster women's business ownership. Many of these initiatives have involved strategic partnerships and agreements with private organizations and companies, all of which were approved through the Council's annual budgeting process.

Under Ms. Millman's leadership, the Springboard program, launched in 1999 by several private organizations and individuals in cooperation with NWBC, became the most successful of the countless programs to which the Council gave support and funding. Indeed, the Council had a role in developing the Springboard concept and contributing funds for the development of Springboard programs, a web site, and other supporting materials. Non-governmental sponsors, however, contributed the bulk of the funds and in-kind support.

In this sense, the Springboard program represented exactly the kind of public/private collaboration contemplated by Congress when it established the NWBC. As the Springboard program came into existence and quickly became a success, Council members were kept informed about the program, about the involvement of NWBC staff in the program, and about the intention to create a non-profit organization that could sustain and build on the Springboard efforts. See Minutes, Oct. 4, 2000, at 44, 44-45 (Ms. Millman: "Just so that people understand about Springboard . . ."; "[D]ecisions are being made now to spin this off, like we have done [with] other ideas and concepts . . ."); see also Minutes, Feb. 14, 2001, at 150, 151 (Ms. Millman: "[I]t's appropriate, like we have done with many other projects, to spin Springboard off to its own enterprise."; "Debra and I are going to . . . move to Springboard . . ."). Indeed, the concept of launching a separate organization with the Council's support was nothing new — the Council had "spun off" other organizations in the past. See Minutes, Feb. 14, 2001, at 152 (Chairperson Koplovitz: "There have been other initiatives that have been spun off from the Council in the past that people here or some of the people here who have a long history understand.")

Nevertheless, the OIG concludes that "SBE appears to have been given an unfair competitive advantage. . . [The] connection with NWBC lent a certain degree of credibility to SBE and allowed it to take advantage of publicity NWBC had received for its forums and the connections NWBC had made within the venture capital community." Draft Report at 6. To begin with, it is unclear what the OIG means by the phrase "unfair competitive advantage," since Springboard was a non-profit entity that worked in close cooperation with a network of other non-profits that shared similar goals. More fundamentally, these comments suggest that the OIG profoundly misunderstands the relationship between the work of the Council and the launch of Springboard Enterprises.

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Springboard Enterprises was not created out of Ms. Millman's self-interest, nor did its creation improperly leverage the work of the Council to the Council's detriment. Springboard Enterprises was established in order to guarantee access to substantial private funding, to alleviate the staffing burden on the various private sponsors of the forums, and to sustain the growth of the Springboard program in the future. At the time of Springboard Enterprises's incorporation in September 2000, Ms. Millman had made no decision to leave the Council, and she was listed as "President" on the Articles of Incorporation simply as a placeholder. Her decision to leave the Council was not made until after the 2000 elections, and she promptly notified the Council at the February 14, 2001 meeting.

As these facts make clear, the time that Ms. Millman and Ms. Filtzer spent working on Springboard forums and on the creation of Springboard Enterprises did not "conflict with their official duties." *Id.* at 5. Rather, this work was very much a part of their official duties, as evidenced by the continued support by the Council of their efforts throughout 2000 and 2001. *See* Minutes, Feb. 14, 2001, at 153-54 (Chairperson Koplovitz: "I think this Council owes [Ms. Millman and Ms. Filtzer] enormous gratitude for seeing the potential of [Springboard] and being able to move it onto the next levels . . ."). The creation of Springboard Enterprises did not disadvantage the Council, nor did it disadvantage any non-profit entity; on the contrary, it advanced the Council's mission of generating support for women business owners.

**B. Finding 2: Allegation that NWBC Entered Into Inappropriate Agreements**

The second finding by the OIG suggests that the NWBC's core business practices violated numerous procurement regulations. The OIG, however, ignores the fact that many of the Council's business practices – including co-sponsorship arrangements, grants, and sole-sourced contracts – were entirely consistent with Congress's intent that the NWBC "develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise." 15 U.S.C. § 7106(d)(4) (2003). The women's business community is close-knit, and the organizations that focus on promoting women's business enterprise are well-known and relatively few in number. Without these organizations' support, the Springboard forums, as well as other Council-supported initiatives, never would have succeeded. Thus, in order to carry out its mission, the Council sought to co-sponsor events, "seed" new initiatives through the provision of grants, and work with the premier organizations that were uniquely capable of bringing Council-supported initiatives to fruition. The OIG's finding that the Council entered into inappropriate agreements fails to take account of this business reality.

Moreover, it is arbitrary and unfair for the OIG to fault the Council for its contracting practices, given that when Ms. Millman was Executive Director of the NWBC, the SBA's own office responsible for ensuring compliance with applicable procurement regulations disclaimed any responsibility for the NWBC. As the Draft Report notes, any alleged irregularities "could have been avoided if OPGM [had] ensured that NWBC awards conformed to applicable procurement regulations." Draft Report at 7. OPGM officials believed, however, "that NWBC

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was not part of SBA." Id. Given OPGM's abdication of any responsibility over NWBC contracts, the Council was left to act in accordance with longstanding practices – practices that no one at the SBA questioned.<sup>2</sup>

**C. Finding 3: Alleged Violations of Federal Travel Regulations and SBA Travel Policy**

The OIG recommends collecting over \$45,000 in travel expenses from Ms. Millman and over \$12,000 in travel expenses from Ms. Filtzer. We know of no legal basis for the OIG to recommend recovering travel reimbursements that have already been processed and paid by the SBA. In any event, it is grossly unfair for the government to suggest, years after the fact, that Ms. Millman and Ms. Filtzer must pay five-figure sums of money to the Federal Government for travel expenses that they actually incurred for travel that advanced the mission of the NWBC. While the SBA takes issue with various specific expenditures on various grounds, the stark fact of the matter is that Ms. Millman and Ms. Filtzer are being threatened with having to pay out of their own pockets for official government business trips that they took in order to further the work of their employer – and yet this remedy is proposed as a punishment for what in the vast bulk of cases amounts to nothing more than paperwork errors.

The linchpin of the OIG's position concerning these paperwork errors is that Ms. Millman's and Ms. Filtzer's travel was strictly governed by the Federal Travel Regulations, and yet the text of the law does not establish that basic premise. Under 41 C.F.R. § 301-1.3(a), the Federal Travel Regulations apply to "[e]mployees" traveling on official business. An employee is defined as "[a]n individual employed by an agency." 41 C.F.R. § 301-1.2. An "agency" is defined in 41 C.F.R. § 301-1.1 as "An Executive agency, as defined in 5 U.S.C. 101." Yet, the NWBC is not comprised within 5 U.S.C. § 101, which lists the departments of the executive branch of the federal government. Rather, the NWBC is an advisory council whose statutory mission is to "serve as an independent source of advice and policy recommendations" to the ICWBE, to the SBA, to Congress, and to the President. Pub. L. 103-403, § 405, 108 Stat. 4175, 4195 (as amended, 15 U.S.C. § 631, Note). Since on the face of the law it is far from clear that the Federal Travel Regulations even apply to the NWBC, it is difficult to understand how the OIG can hold Ms. Millman and Ms. Filtzer to those standards on an after-the-fact basis, much

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<sup>2</sup> In addition, the OIG fails to take account of the fact that NWBC [b6] was responsible for handling all procurement-related paperwork. While Ms. Millman had overall responsibility for Council business, it is unfair in the extreme to hold her accountable for problems in documentation and processing of paperwork by an employee who she understood to have been hired and trained to handle such matters.

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less apply those standards to demand that Ms. Millman and Ms. Filtzer, now private citizens, use their personal savings to pay the cost of official trips that they took long ago.

Moreover, even if these regulations were held to authorize retroactive recovery of reimbursements, Ms. Millman and Ms. Filtzer should not be penalized by the OIG's decision, months and years after the fact, to apply standards that were never applied to NWBC travel at the time the trips were taken. Even prior to the arrival of Ms. Millman or Ms. Filtzer at the NWBC, longstanding practices were in place concerning travel arrangements. In addition, Ms. Millman and Ms. Filtzer relied on a trusted colleague, NWBC [b6] to attain the necessary knowledge and training on applicable travel regulations and to submit the appropriate paperwork. Indeed, [b6] was hired for the specific purpose of overseeing all administrative aspects of the Council's work. At no time were Ms. Millman and Ms. Filtzer given any indication that [b6] was not following appropriate travel reimbursement procedures. Nor can Ms. Millman and Ms. Filtzer comment on the propriety of specific reimbursement requests submitted by [b6] on their behalf or explain why [b6] appears to have failed to create contemporaneous documentation of the fact that the trips in question were authorized. Our clients do know, however, that [b6] made a practice of seeking guidance from various SBA officials and that she sought guidance in the particular area of travel reimbursements. Thus, it is reasonable to infer that whatever actions [b6] took were consistent with the instructions she received from the SBA.

Indeed, the OIG should not overlook the fact that the SBA itself processed and paid for Council-related travel repeatedly throughout Ms. Millman's and Ms. Filtzer's tenure. Thus, by all indications – whether from [b6] or from the SBA – Ms. Millman and Ms. Filtzer had every reason to believe that they were following the applicable rules and regulations. Nothing in the OIG's post hoc review can obscure this fundamental point.

Our clients also take particular exception to a number of specific conclusions reached by the OIG with respect to their travel practices. First, as the OIG notes in the Draft Report, the travel issue with respect to Ms. Millman's daughter has been resolved, and funds required to reimburse the Government were withheld from Ms. Millman's final paycheck at the Council. Given that Ms. Millman promptly corrected this matter and made full payment to the SBA, its inclusion in the Draft Report suggests an effort to cast Ms. Millman in as unflattering a light as possible.

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<sup>3</sup> To the extent that the OIG's recommendation for recovery of travel reimbursements is based on SBA travel policy, as distinct from the Federal Travel Regulations, Ms. Millman and Ms. Filtzer reiterate their argument that both the Council and the SBA itself treated the Council as a non-SBA entity during their tenure.

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Second, the OIG's disapproval of the weekend staff meeting in Las Vegas ignores the fact that extensive Council business was conducted on this trip. It is therefore unfair to conclude that the Council "wasted and mismanaged Government funds." Draft Report at 12.

Third, the OIG unfairly characterizes the trip to Massachusetts. Ms. Millman explained at length in her January 9, 2002 meeting with the OIG that the primary purpose of the set of meetings was to discuss follow-up issues related to the Springboard forums, not, as the OIG suggests, to hold a board meeting of Springboard Enterprises. We submit that the OIG places undue emphasis on the written agenda and disregards Ms. Millman's account of those meetings.

Moreover, we strongly object to the OIG's recommendations, as set out in Appendix B to the Draft Report, that particular funds be recovered from Ms. Millman and Ms. Filtzer. To the extent that the OIG recommends recovering funds related to the Council meetings in Massachusetts and Nevada, we rely on the arguments stated above. Legitimate Council business was conducted at these meetings.

In addition, the OIG's recommendation for recovery of overages related to a "duty station lodging expense," or a lodging expense "in excess of per diem," disregards the fact that, in most instances, Ms. Millman and Ms. Filtzer were simply complying with the travel preferences of Council members. Ms. Millman was the Executive Director of the NWBC, and as such she reported to the Council; she did not dictate how the Council would conduct its business. Likewise, Ms. Filtzer, as an employee of the Council, certainly had no control over what hotels were used or what travel expenses were incurred to carry out Council business. Accordingly, Ms. Millman and, a fortiori, Ms. Filtzer, should not be held to account for these overages.

The remaining and most pervasive rationale for recovering funds from our clients – "Post-dated or Unauthorized Conference Travel" – is the most objectionable. Throughout their tenure at the Council, Ms. Millman and Ms. Filtzer traveled around the country conducting the Council's business. They worked tirelessly to promote the Council's mission and executed their duties faithfully and diligently. In connection with each of these legitimate business trips, they relied on a colleague, [b6], to submit the appropriate paperwork and obtain reimbursement from the Federal Government. Indeed, the SBA processed and paid these reimbursement requests routinely. Thus, up until the initiation of this Audit, no one – from the junior-most employee at the Council to the senior-most officials at the SBA – questioned the propriety of the Council's practices. Now, two years after Ms. Millman and Ms. Filtzer left the Council, the OIG recommends recovering vast sums of money from them because certain paperwork either was not submitted or was submitted late. We cannot help finding this proposed remedy for paperwork errors to be utterly Draconian.

Although the OIG sharply criticizes the NWBC's travel practices, this plainly is not a situation involving self-enrichment or fraud. Travel authorizations were not back-dated to hide the fact that they were prepared late. No reimbursement requests were submitted for travel that

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never took place. Quite the opposite: these were real trips for real business, yet the forms were filled out incorrectly. Because Ms. Millman and Ms. Filtzer relied on a colleague who turns out to have made paperwork errors, and because they were given "insufficient oversight" by OCFO officials, *id.*, they are now being threatened with having to defray out of their own pockets tens of thousands of dollars in expenditures for official government business.

We would not hesitate to endorse the proposition that the Audit turned up a need to impose more rigorous controls in the future. But the proposal to recover money from our clients, based on an application of long-overlooked rules of questionable applicability, is wildly disproportionate to the actions of Ms. Millman and Ms. Filtzer. We take strong exception to the proposal.

**D. Finding 4: Allegations of Improper Use of NWBC's Business Assistance Trust Fund**

Ms. Millman explained in the January 9, 2002 meeting with the OIG that she had had little or no training on the proper use of the Business Assistance Trust Fund ("BATF"). Indeed, the OIG asserts that the BATF was used improperly "because SBA's internal controls to detect and prevent such abuse were lacking or ineffective." *Id.* at 16. In fact, "OCFO officials processed all the BATF transactions that were approved by the Executive Director without questioning any transactions. Also, SBA did not provide any official guidance about the proper use of the BATF." *Id.* As with the areas of contracting and travel reimbursement, Ms. Millman acted in accordance with the office practices of the NWBC, and it was not suggested until the OIG's Audit that there was any deviation from applicable standards.

The OIG suggests that Ms. Millman must remit \$4,921.43 to correct for "reimbursements for Government-paid travel expenses that were improperly deposited into the BATF," as well as an additional \$1,682.30 "to cover the shortfall in the BATF resulting from a reception held in her honor." *Id.* at 17. We respectfully consider this recommendation to be inappropriate.

First, the OIG has engaged in double-counting. The report notes that "when travelers reimbursed NWBC \$7,297.26 for personal travel that was paid for by the NWBC, NWBC deposited the checks into the BATF[,] where some of it was later used to pay for catering expenses at a reception in honor of the Executive Director . . ." *Id.* at 16 (emphasis added). Thus, to the extent that the OIG seeks to hold Ms. Millman responsible for the difference between the remaining balance in the BATF (\$2,375.83) and the amount reimbursed to the NWBC for travel expenses (\$7,297.26), that difference includes any BATF funds used to pay for the reception. Accordingly, the OIG's suggestion that Ms. Millman is responsible both for the difference – \$4,921.43 – as well as the overage for the reception – \$1,682.30 – is plainly wrong.

Second, there is no allegation in the report that Ms. Millman misused all of the \$4,921.43. Rather, the only specific allegation of misuse of funds is with regard to the \$1,682.30 that

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allegedly was used to pay for the reception. Thus, if the OIG were to hold Ms. Millman responsible for the \$3,239.13 above the \$1,682.30 allegedly used for the reception, it would be suggesting that she is personally responsible for travel expenses incurred by others and that she should be held personally accountable for \$3,239.13 that she neither received nor benefited from. This conclusion is plainly inappropriate in light of Ms. Millman's lack of training with respect to using the BATF and the OIG's failure to identify any improper expenditure other than the reception in Ms. Millman's honor.

Third, the OIG has failed to justify holding Ms. Millman personally responsible for the \$1,682.30 in BATF money that allegedly was used for the reception. Although she had ultimate responsibility for approving expenditures from the BATF, Ms. Millman delegated the management of the BATF to her subordinates. Moreover, she had no knowledge that the use of such funds for something like a reception might be considered improper. In fact, Ms. Millman believed that BATF funds could be used for catering. Given the complete lack of oversight provided by the SBA, the OIG should not now seek to exact a penalty from Ms. Millman for expenditures that she believed were entirely proper at the time they were made.

**E. Finding 5: Other Allegations of Inappropriate Activities**

**1. Allegedly Inappropriate Use of Purchase Card**

Ms. Millman has explained to the OIG that she had little involvement with the processing of reimbursement requests and that she relied on [redacted] to ensure that applicable regulations were followed. Thus, although Ms. Millman was "the approving official" for the NWBC's credit card, *id.* at 19, and an NWBC staff member evidently made the general assertion that "the Executive Director approved all credit card purchases," *id.*, it is unfair to hold Ms. Millman personally responsible for purchases that cannot be attributed directly to her.

In addition, we question the OIG's conclusory statements that the various purchases constituted unallowable "gifts" and "other expenditures that did not go towards fulfilling NWBC's mission." *Id.* If the OIG has specific documentary or other tangible evidence that Ms. Millman deliberately used the NWBC's credit card for improper purchases, it should have been referenced or attached to the Draft Report. Accordingly, we object to the recommendation that SBA seek to recover \$1,398.95 from Ms. Millman.

**2. Allegedly Improper Cash Award to Ms. Filtzer**

Ms. Filtzer should not be required to reimburse the Government for the \$10,000 payment that she received. As Ms. Millman has explained, Ms. Filtzer was given this money by the private-sector organizers of the Mid-Atlantic Forum to reflect extensive efforts undertaken by Ms. Filtzer, on evenings and weekends, to make the forums a success. She was given this money in a good faith gesture to reward her for tireless efforts on behalf of the forums, and she received



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it in that spirit. Indeed, there was nothing duplicitous in the provision of this money to Ms. Filtzer. The payment was reflected on the ledger for the Mid-Atlantic Forum, and Ms. Filtzer reported the income on her federal income tax return.

As we have argued throughout this submission, we strongly disagree with the OIG's statement that "the forum proceeds were Government funds." Id. at 18. As we have pointed out, the OIG does not provide support for its apparent view that the Government automatically owned any excess of the receipts of the forums over their expenses. The Council was established to "develop and promote new initiatives . . . [and] programs," 15 U.S.C. § 7106(d)(4), not to serve as a profit center for the Federal Government.

In addition, the OIG does not provide any legal authority for its claim that the payment to Ms. Filtzer constituted a "performance award" to a Government employee. Id. If the OIG has such authority, it should have been cited and/or appended to the Draft Report. Otherwise, Ms. Filtzer cannot now be required, years later, to remit these funds to the Federal Government.

### 3. Allegedly Improper Cash Awards to Ms. Millman

The OIG also concludes that cash awards to Ms. Millman that were authorized by the Chair of the NWBC were improper and that the current Executive Director should determine whether these funds should be recovered. Again, the OIG's conclusion rests on the faulty premise that individuals within the NWBC and the SBA considered the Council to be a part of the SBA. As the OIG itself acknowledges, this was not anyone's understanding. In fact, the office responsible for processing the awards to Ms. Millman "believed that NWBC was not part of SBA." Id. It is simply unfair to require repayment of funds that were awarded based on an understanding, both within the Council and the SBA, that is completely at odds with the position advanced by the OIG in the Draft Report.

### III. Conclusion

By all accounts, the Springboard forums for women entrepreneurs have been a dramatic success, made possible by extensive private funding along with "seed" money from the NWBC. Ms. Millman and Ms. Filtzer can be proud of the service they put in while employed by the NWBC. While the imposition at the NWBC of strong controls on a going-forward basis is laudable, we respectfully disagree with the OIG's recommendation that the SBA pursue recoveries against Ms. Millman and Ms. Filtzer. We submit that such an effort lacks support in the law and would impose an unfairly harsh retroactive burden on two dedicated individuals. We ask that the OIG report be revised to reflect the concerns and corrections expressed in this letter.

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We also respectfully request the opportunity to meet with the OIG to discuss these issues further.

Sincerely,

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Stephen P. Anthony